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In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. [redacted] 95

TECON CORPORATION,
PETITIONER,

v.

SECRETARY OF THE TREASURY OF THE COMMONWEALTH OF PUERTO RICO,
RESPONDENT.

SUPPLEMENT TO PETITION FOR WRITS OF CERTIORARI

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In the
Supreme Court of the United States

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No. 900

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RESPONDENT.

SUPPLEMENT TO PETITION FOR WRITS OF CERTIORARI

APPENDICES B, C AND D

Appendix B

IN THE GENERAL COURT OF JUSTICE OF PUERTO RICO
SUPERIOR COURT — SAN JUAN PART

Civil No. R-133 REFUND

TECON CORPORATION,
PLAINTIFF,
v.
SECRETARY OF THE TREASURY,
DEFENDANT

OPINION AND JUDGMENT

Dispute:

In the course of the hearing held on October 11, 1955, the parties stipulated, among other things, that:

STIPULATION

A. The Government of the United States acquired *exclusive jurisdiction* of the land on which Ramey Air Force Base is located, near Aguadilla.

B. On said land of Ramey Air Force Base the machinery and appliances, contrivances, tools, house (trailers), vehicles, parts and accessories, etc., referred to in the complaint, were used by Tecon Corporation.

C. Plaintiff has suffered the burden of the payment of the excise taxes, the refund of which it claims, without having passed on the taxes to any other person, either natural or juridical.

SPECIFIC POINTS TO BE DECIDED

D. The dispute between the parties to be decided by this Court, has been limited to:

Whether or not it is proper to refund part or all of the excises, in the amount of $36,818.75, paid by plaintiff on

different dates from 1952 to 1953, on machinery, appliances, contrivances, tools, house trailers, parts and accessories, etc., introduced into Puerto Rico for Tecon Corporation.

In support of its claim, plaintiff alléges as follows.

1. The excises collected in this case were equivalent to a tax on *importation*, which is forbidden by law. *Buscaglia, Treas,* v. *Ballester*, 162 Fed. 2d 805.

2. The tax laws of Puerto Rico are not in force on the land of Ramey Air Force Base, under the exclusive jurisdiction of the Government of the United States, and therefore the articles referred to could not be taxed with such excises.

3. Its industrial installation devoted to the processing of limestone for use in the paving of roads and landing and take-off fields for planes in said Base, was entitled to tax exemption.

4. The compressors propelled by power other than electric are not taxed by the Internal Revenue Law.

5. The house trailers, the property of plaintiff, are not comprised in the provisions of subsection 8(a) of Section 16 of the Internal Revenue Law, nor in the provisions of any other section of said law.

STATEMENT, SUMMARIZED IN PART, OF PROOF ADDUCED.

1. *As to taxes on imports:*

The property on which the excises claimed were paid belonged to Tecon Corporation and was used *exclusively* within the area of Ramey Air Force Base, in connection with the construction work being performed there by plaintiff for the Government of the United States. Such excises were collected on the "introduction" into Puerto Rico of

the articles referred to, as was determined by the Secretary of Finance.

In a letter (Exhibit B) addressed to plaintiff, defendant stated, among other things:

> "... there is nothing in the Internal Revenue Law which exempts a taxpayer from the payment of excises on the introduction into Puerto Rico of specialized equipment for the performance of work for an entity exempt as a dependency of the Federal Government."

2. *As to the effectiveness of the "Internal Revenue Law of Puerto Rico" in the area of Ramey Air Force Base:*

See paragraphs A and B, *supra*, of the stipulation.

3. *As to the tax exemption attributable to the industrial installation for the processing of limestone:*

The industrial installation concerned was devoted to the production of limestone for use in the paving of roads, ways, landing fields, etc., in Ramey Air Force Base.

The machinery in that industrial installation was propelled by power generated by means of diesel oil. It was similar to the industrial installation of any quarry for the extraction and elaboration of stone used regularly in the making of concrete.

4. *As to the compressors propelled by power other than electric power:*

The compressor acquired by plaintiff is listed in Exhibit 1. See page 3 of the same.

It was a small compressor used in the repair and paint shop of plaintiff. It was portable, mounted on a frame provided with four wheels, in such a way, that inside the shop, it could be moved from one place to another, for the

purpose of being able to supply, at any place where it was needed, air by pressure, of several hundred pounds per square inch. The energy used to compress the air was that generated by a motor which used diesel oil.

Tecon Corporation never hauled its compressors from one job to another. It chose to place such compressors on frames equipped with wheels, on trailers. It was these latter which were hauled by trucks from one job to another.

The compressors are screwed to the frames holding them, as per the testimony of Joseph D. Metcalfe, General Superintendent of Tecon Corporation.

5. *As to the house trailers:*

The houses under consideration are small houses, where employees of Tecon, division of inspectors or superintendents, were housed.

The length of each house was 41 feet; the width, 8 feet; and there was a distance of some 9 feet between the ceiling and the floor. Its interior rooms were: living room (or reception room), breakfast nook, kitchen, bedroom, bathroom. They had two shafts, with a couple of wheels each, which were used in hauling them from the piers to the places where they remained stationary. See Exhibit II (A).

When they were parked, they were put on the right level, and they were held to the ground by means of concrete blocks. (See Exhibit II (D).

Their sanitary installations were connected to drinking water pipes and to sewers. (Exhibit II (D).

They were furnished with electric light, hot water and refrigeration, and electric stoves and ovens. Some of them had telephone connections.

For the purposes of making them resistant to hurricane-like winds, they were equipped with steel tension devices connected to concrete pegs. ((Exhibit II (B).)

Witness Joseph D. Metcalfe lived for two years and one

month in one of those small houses with his wife and —at first—two children— lately three children.

Plaintiff sold here in Puerto Rico one of the houses referred to in the complaint.

On that house Tecon Corporation had paid excise taxes in the amount of ..... $ 844.90
which it did not add to the selling price to E. Leon. The latter paid, for such property, its original cost, plus freight, less depreciation.

Tecon Corporation also sold here in Puerto Rico:

(A)—A model 6 shovel

(B)—A "Hough" loader, used to pick up rock, sand, or anything similar

(C)—Two "sheep's foot" rollers

(D)—One "Buffalo" Springfield three-wheel roller.

For those articles plaintiff had paid excises amounting to 486.65

Total $1,331.55,

which latter amount was not included in the selling prices.

Discussions and Conclusions.

I. *As to the nature of the tax:*

In Section 16 of the Internal Revenue Law it is provided:

> "There shall be collected and *paid, only once*, as an internal revenue tax on the following articles and on the articles comprised in this section of the law, sold, transferred, used, consumed in, or *introduced* into Puerto Rico." (Italics ours.)

In accordance with the evidence presented, the articles referred to in the complaint were acquired by plaintiff through consummation of their transfer, as they were *used*

here in Puerto Rico, even though they were used inside some land which was under the exclusive jurisdiction of the Government of the United States.

In accordance with law, the amount of the excise taxes is always the same, independently of the fact of whether or not, when they are paid, the *use* of the taxed articles is had in mind, or whether they are considered in connection with their sale, transfer, consumption or *introduction* into Puerto Rico.

The law requires that there be collected and *paid*, only once, the corresponding excises, that is, those fixed for any one of the five taxable incidents.

That is to say, there has been established, for the affected citizen, the *duty to pay them*.

And that duty is, originally and *primarily*, the duty of paying *only once* excise taxes for the privilege of *use* or *consumption* within this country, of the taxed articles listed in the law. But it is obvious that, in order for the taxed article to be *used or consumed*, it previously has to be produced or brought to life, in some manner, whether through its *manufacture* or processing in Puerto Rico,* or through its introduction within the geographic limits of this Island.

But the *collection* of the excise taxes for the privilege of *consumption*, would be difficult, almost impossible, in practice. And for the privilege of *use*, it would still be quite difficult. Unquestionably, in either of the above two cases, it would be more inconvenient than *collection* for the privilege of the *acquisition for* later use or consumption.

In cases where *the sales* or *transfers* are carried on outside the jurisdiction of Puerto Rico, the tax on these two incidents could not be collected unless, as demanded by our law, the payment of the excises is exacted when the merchandise affected is *introduced* into Puerto Rico.

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*See Section 16(5) imposing an excise tax on the *manufacture* of sugar in Puerto Rico.

The fact that at the time the *collection* of the excises referred to is effected within the term in which the taxpayer is obliged to *pay them*, the Secretary of the Treasury had in mind the incident of the *introduction*, instead of any other of the five incidents listed in the law, would not, cannot, give rise to a right to claim the refund of the *payable* taxes which were *paid* in compliance with statutory provisions.

In the present case the property in question was *introduced* into Puerto Rico, and after having been transferred to Tecon Corporation, was used by that enterprise in this country, even though, we reiterate, this took place within a zone which is under the exclusive jurisdiction of the Government of the United States.

Just the same as taxpayer maintains that the action of the Secretary of the Treasury in fundamentally concluding and informing that the excises the object of this suit were assessed on the "introduction" into Puerto Rico of the taxed articles *has been equivalent* to a collection on the *importation* of the same, it should have inferred the following: *not* that it *has been equivalent* to but that it really *was*, in accordance with law, *primarily* by reason of the *use* made of such property.

Seen in this way, Public Law No. 819 (76th Congress, October 9, 1940, H.R. 6887—4 U.S.C.A. Sec. 105) is applicable in this case, which law provides:

> "No person shall be relieved from liability for payment of, collection of, or accounting for any sales or *use* tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or *use*, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area

within such State to the same extent and with the same effect as though such area was not a Federal area": (Italics ours).

A little reflection in connection with the provisions of our Internal Revenue Law will reveal that, in truth, the excise taxes we are dealing with are levied on the privilege of *acquiring, here in Puerto Rico*, certain properties, *to* derive from them some advantage, either physical or spiritual, or to dispose of them, or, in other words, to enjoy them or dispose of them.

If in the present case Tecon Corporation, instead of *using* the articles referred to, would have *exported* them, without having transferred them to another person, whether natural or juridical, or without having *sold* them, or consumed them, within this country, then the excises in question would have been *collected* for or on the basis of *importation* exclusively, perhaps in a non-authoritative manner—should the other requisites of the law not have been complied with. See Section 71 of the Internal Revenue Law.

It should be borne very well in mind that the action of the Secretary of the Treasury, in *collecting*, or not collecting excises on certain incidents, on specific dates, is not what constitutes the *imposition* of taxes. Such *imposition* is made exclusively by law; and every taxpayer is obliged to comply with the law, independently of what the rights of the Secretary of the Treasury may be, in accordance with the terms of the law itself.

2. *As to the effectiveness of the Internal Revenue Law of Puerto Rico in the area of Ramey Air Force Base.*

See the statements made in the preceding paragraph No. 1.

3. *As to the tax exemption claimed for the industrial installation for the processing of limestone.*

In compliance with the judgment of our Supreme Court in *Descartes, Treas.* v. *Tax Court, Puerto Rico Aggregates Co., Intervenor*, 78 P.R.R. 83, it is our duty to dismiss the claim for tax exemption as regards the industrial installation referred to for the processing of limestone or caliche.

4. *As to the compressor propelled by a diesel motor.*

We are dealing here with a compressor which was not propelled by electric power or fluid gas.

By virtue of the decision of our Supreme Court in the case of *Central Coloso* v. *Descartes, Treas.*, 74 P.R.R. 449, said compressor could not be taxed with the excises established in Article 16(20) of the Internal Revenue Law.

But defendant insists in that Article 16(35) of said Law is indeed applicable in this case. For the reasons stated by us on January 18, 1957, in deciding Case R-128, *Island Properties Co., Ltd.* v. *Secretary of the Treasury*, we now decide that in the present instance, the instance of caption, plaintiff is right, and that its compressor, propelled by a diesel motor, could not be taxed through the payment of excises, at the date of its introduction into Puerto Rico.

5. *As to the house trailers.*

It is defendant's contention that the houses referred to are subject to excise taxes by virtue of the provisions of Article 16(8a) of the Internal Revenue Law, which article, in 1952-53, read as follows in its pertinent part:

> "On all *vehicles*, not self-propelling . . . sold, transferred, used, or consumed in, or introduced into, Puerto Rico, a tax of ten (10) per cent on the selling price in Puerto Rico; PROVIDED, that trailers or semi-trailers sold, transferred, used, or consumed in, or introduced into, Puerto Rico, shall be subject to a tax

of fifteen (15) per cent on the selling price in Puerto Rico."

The small dwellings we are dealing with were taken, already made, on their own wheels attached to and rotating around axles which are fixed on the inferior frame of the structures themselves. Such contrivances were in fact dwellings, *basically and principally*, even though they had certain characteristics proper to vehicles—that is to carriages relatively *easy* to be moved on the surface of the earth which are fit for and are customarily used in the *transportation of persons or things*.

The devices concerned do not combine the conditions effectively appropriate to do this last thing in an efficient and economical manner. What can be transported in them, *once in a while*, is the few pieces of furniture which for living purposes are contained in them. The uncomfortable features found in them, such as their sink, stove, cupboard, etc., are permanent parts of the same. More than anything else they are luxurious substitutes for tents. It is as such tents or barracks that they are principally used.

They do not have the conditions that are suitable for *true* dwellings other than the dwellings existing in slums. They are special types of barracks used in *camps* for employees working on construction jobs, in areas which, ordinarily, are far from urban zones.

But the special features which characterize them, and their discomforts as dwellings for long periods of time, do not turn these contrivances into the *vehicles* which, in our opinion *the legislator had in mind* in approving Article 16(8a) supra.

It is in order to grant the claim of plaintiff.

In summary:

A. The following are denied:

1. The claim of plaintiff based on the fact that the excises collected by defendant have been, in fact, customs duties on the importation of articles; and the action of the Secretary of the Treasury is upheld in denying, on the ground of illegality invoked by plaintiff, the refund of the excises collected on the taxable incident of the introduction of the merchandise under consideration into Puerto Rico.

2. The claim of plaintiff based on the fact that the affected property were not taxable by virtue of the fact that they were introduced into and used within an area which is under the exclusive jurisdiction of the Government of the United States.

3. The claim of plaintiff in connection with the articles introduced into the country to be used in an industrial installation for the processing of limestone, which in this case has been called "caliche".

B. The following claims of plaintiff are granted:

1. As to the compressor propelled by diesel oil.
2. As to the house trailers.

The Secretary of the Treasury shall file, with the Secretary of this Court, the corresponding computations within twenty days, which term shall be counted from the date on which this judgment is notified to him.

To be notified.

San Juan, Puerto Rico, February 21, 1957.

ANTONIO S. ROMERO
Judge

Appendix C

IN THE SUPREME COURT OF PUERTO RICO

12,287 REFUND

TECON CORPORATION,
PLAINTIFF-APPELLEE-
APPELLANT
v.
SECRETARY OF THE TREASURY,
DEFENDANT-APPELLANT-
APPELLEE

Appeal from the Superior Court
San Juan Part

Division composed of Mr. Justice Perez Pimentel, as Chief Judge of Division and Mr. Justice Santana Becerra and Mr. Justice Rigau
Opinion of the Court rendered by
Mr. Justice Perez Pimentel
San Juan, Puerto Rico, December 18, 1961.

During the years 1952 and 1953, Tecon Corporation introduced into Puerto Rico machinery, tools, house trailers and equipment and parts and accessories for the same to be used in the work being carried on by it in Ramey Air Base in Aguadilla. After having paid the sum of $37,345.38 for excise taxes, it requested the refund of the same from the Secretary of the Treasury,[1] but the only refund granted was in the sum of $526.63.

[1] The taxpayer based its claim for refund on the following grounds: (1) the excise taxes collected were a tax on importation, prohibited by law; (2) the tax was imposed exclusively on the introduction of articles and appliances, the use of such equipment not having been taken as a basis for the imposition of excise taxes; (3) the tax laws of Puerto Rico are not in force in the federal area of Ramey Base,

The taxpayer appealed to the Superior Court and after a hearing on the merits the said Court rendered judgment upholding the complaint as to the compressors propelled by diesel oil and as to the house trailers, and dismissing it as to the other particulars.

Both parties appealed. Plaintiff-appellant has imputed the commission of the following errors to the lower court:

"First Error

"The Superior Court erred in dismissing the claim of plaintiff based on the fact that the excise taxes collected by defendant were customs duties on the importation of articles, and in upholding the action of the Secretary of the Treasury in refusing to refund the excises collected on the introduction of the merchandise, machinery, equipment, etc., into Puerto Rico.

"Second Error

"The Superior Court erred in dismissing the claim of plaintiff based on the fact that the property the object of this suit should not be subject to the payment of excise taxes on their introduction into Puerto Rico.

"Third Error

"The Superior Court erred in dismissing the claim of plaintiff in connection with the articles introduced into Puerto Rico to be used in an industrial installation devoted to the processing of limestone, referred to as 'caliche" in this case."

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to which Public Law 819 (76th Congress, October 9, 1940, H.R. 6887) is not applicable; (4) the machinery and equipment of the caliche (limestone) industrial plant was tax-exempt; (5) the compressors propelled by power other than electric power or by fluid gas, were not taxable; the paving breakers were not taxed by the Excise Tax Law, and (6) neither were the house trailers taxed by said Excise Tax Law.

However, defendant-appellee has requested the dismissal of this appeal on the ground that the notification of the notice of appeal was not made within the statutory term.

The copy of the notification of the judgment was filed in the record on March 7, 1957. Therefore, the term within which an appeal could be taken was up on April 6, 1957. Section 295 of the Code of Civil Procedure. Plaintiff filed its notice of appeal at 4:59 P.M. on Friday, April 5, 1957, that is, in due time, and one minute later it notified the said appeal by mail to the attorney for defendant, who received the same in his office on April 8 of the same year. The offices of the attorneys for both parties are located in the City of San Juan.

Section 296 of the Code of Civil Procedure (32 LPRA 1283) provides that an appeal is taken by filing with the Secretary of the court in which the judgment or order appealed from was entered, a notice stating the appeal from the same, or some specific part thereof, and serving a similar notice—the Spanish text states—on the adverse party or on his attorney. The English text, which should be the prevailing one,[2] provides that a similar notice be served on the adverse party, or his attorney.[3] The remittance by mail can take place, in accordance with Section 321 of the same statute (32 LPRA 1432), when the person in charge of making the notification or remitting the documents and the person to whom the same were addressed should reside or should have their offices in different places, between which there is a regular communication by mail. Persons residing in two different places or localities with-

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[2] *Mestres* v. *Diaz Roman*, 50 P.R.R. 354.

[3] The English text reads: ". . . and serving a similar notice on the adverse party, or his attorney." The word *service* when used with reference to summons, writs, subpoenas, notifications and other legal proceedings, means the reading of the document to the persons to be notified or the delivery to such person of the original or a copy of the same. *Asencio* v. *Heirs of Rodriquez*, 49 P.R.R. 8, 10.

in the same city do not reside in "different places" within the meaning of this section. *Santana* v. *Salinas*, 54 P.R.R. 109, *Asencio* v. *Heirs of Rodriguez*, 49 P.R.R. 8. Notwithstanding, the notification can be made by mail even though the persons reside in the same place; but if the mail is used to send a notification, when in accordance with Section 321 mentioned above the same should be made personally, the person making the notification runs the risk, if the notification is not received within the statutory period, that the appellate court acquire no jurisdiction. *Collazo* v. *Puig & Abraham*, 70 P.R.R. 780.

Now, in accordance with Section 320 of the Code of Civil Procedure (32 LPRA 1431) the service of notice or delivery of documents should be made personally to the party or his attorney, as the case may be, or, with respect to the attorney, it can be made in the following manner:

> "1. If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and four in the afternoon, in a conspicuous place in the office; or it it be not open so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion; and if his residence be not known, then by putting the same, enclosed in an envelope, into the post office, directed to such attorney."

Since in the present case the attorneys for the parties had their offices in the same city, plaintiff was obliged to notify its appeal personally to defendant's attorney within the statutory term of 30 days. He could only have recourse to the substitute method of service by mail, if the efforts pointed out in Section 320 were unsuccessful. The Rules of Civil Procedure of 1943 do not alter in any way the

procedure provided by the Code of Civil Procedure for appellants to perfect their appeals in civil cases. *Colon* v. *Imperial Guarantee, etc. Co.*, 73 P.R.R. 822; *Collazo* v. *Puig & Abraham*, 70 P.R.R. 780; *Hernandez* v. *Municipal Court*, 69 P.R.R. 827. It does not appear from the record that attorney for plaintiff-appellant should have followed these steps or procedure. In order to have recourse to the substitute method of service by mail, it relied on the assumption that the offices of the attorney for defendant were closed after five o'clock in the afternoon of Friday the 5th and that likewise they would remain closed on Saturday, the 6th, as well as on the fact of his not knowing such attorney's residence.

In interpreting Sections 1012 and 1013 of the Code of Civil Procedure of California, equivalent to Sections 320 and 321 of ours, the courts of that state have sustained the doctrine that in order to have recourse to the service by mail, it is first necessary to have attempted to make personal service and to prove that all the formalities stated in Section 1012 (our Section 320) have been complied with, otherwise the service by mail is not valid. In *Harris* v. *Minnesota Inv. Co.*, 265 P. 306, it was stated: "Sections 1011 to 1015 et seq. of the Code of Civil Procedure of California relate to the manner of giving notice. Reading of these sections indicates that the Legislature intended that notices should be personally served, except in cases where that sort of service is impossible or greatly inconvenient. Section 1011 is detailed and specific as to the manner of giving notice to an attorney. It clearly indicates that every reasonable effort be exhausted to make a direct service upon the attorney or upon someone in his behalf, in person, before service by mail may be resorted to. It is only after unsuccessful attempts to serve the attorney in person or by leaving the paper to be served with someone of matured years, either at his office or residence have

failed, that notice to be served may be mailed to him at his office or residence. Even then the notice must be placed in a 'sealed envelope'. The only other circumstances under which service by mail may be made is that prescribed in Section 1012 of the Code of Civil Procedure, which provides: 'Service by mail may be made, where the person making the service, and the person on whom it is to be made, reside or have their offices in different places, between which there is a regular communication by mail.' It is incumbent upon one serving notice by mail to show that the case is one in which such notice is permitted and that the mode pointed out by the statute has been followed." See to the same effect *Holmes* v. *Anderson*, 265 P. 1010; *Heinlen* v. *Heilbron, et al*, 30 Pac. 8; *Korer* v. *Benedict*, 87 Pac. 231; 18 West's Annotated California Codes, page 433 ff., 40 Cal. Jur. 2d, Sec. 91 ff., page 115.

On the other hand, the reasons adduced by appellant—the uncertainty as to the final nature of the judgment appealed from and conversations had with attorneys for appellee—are not an excuse for not complying with the law. *Arandes* v. *Viera*, 75 P.R.R. 148; *Casasus* v. *White Star Bus Line*, 58 P.R.R. 864.

For the above reasons the appeal should be dismissed for lack of jurisdiction.

PEDRO PEREZ PIMENTEL
Associate Justice.

JUDGMENT

For the reasons stated in the preceding opinion, the appeal filed by Tecon Corporation is dismissed, for lack of jurisdiction.

It was so decreed and ordered by the Court, as witnesses the signature of the Chief Justice.

LUIS NEGRON FERNANDEZ
Chief Justice

I Certify:
IGNACIO RIVERA
Secretary.

MOTION FOR ORAL ARGUMENT

TO THE HONORABLE COURT:—

Now comes Plaintiff-Appellee-Appellant by its undersigned attorneys and respectfully states and requests:

That under date of December 26 of this year the appearing party filed before this Honorable Court a Motion requesting reconsideration of the Opinion and Judgment entered in this case on December 18, 1961, and wishing to argue the same,

THE APPEARING PARTY RESPECTFULLY REQUEST from this Honorable Court that it set a date for a Hearing for the argument of said Motion for Reconsideration, at any time after the 20th day of January 1962, on which date the attorney in charge of the present case will return to her office from her vacation in the United States.

San Juan, Puerto Rico, December 28, 1961.

JAMES R. BEVERLEY
CARMEN B. HERNANDEZ
Attorneys for
Plaintiff-Appellee-Appellant

By .....
CARMEN B. HERNANDEZ

Notified with copy this
28th day of December 1961.
J. B. FERNANDEZ BADILLO,
Secretary of Justice
By .....

ORDER

San Juan, Puerto Rico, January 4, 1962

The motion for reconsideration filed by the plaintiff-appellee-appellant on December 26, 1961, is hereby denied.

It was so agreed by the Court as witnesses the signature of the Chief Justice.

LUIS NEGRON FERNANDEZ
Chief-Justice

I attest:

IGNACIO RIVERA
Secretary

Appendix D

IN THE SUPREME COURT OF PUERTO RICO

12,287 REFUND

TECON CORPORATION,
PLAINTIFF-APPELLEE-
APPELLANT,
v.
SECRETARY OF THE TREASURY,
DEFENDANT-APPELLANT-
APPELLEE.

Appeal from the Superior Court,
San Juan Part

Division composed of Mr. Justice Perez Pimentel as Chief Judge of Division, Mr. Justice Santana Becerra and Mr. Justice Rigau

Opinion of the Court delivered by
Mr. Justice Perez Pimentel

San Juan, Puerto Rico, December 27, 1961

During the years 1952 and 1953, Tecon Corporation introduced in Puerto Rico, machinery, tools, house trailers and equipments and parts and accessories for the same to be used in the work it was carrying on at Ramey Air Base in Aguadilla. After having paid the sum of $37,345.38 as excise taxes, it requested from the Secretary of the Treasury the refund of the same,[1] but only a refund in the amount of $526.63 was granted.

[1] The taxpayer based its claim for refund on the following facts: (1) the excise taxes collected represented a tax on imports, which is forbidden by law; (2) the tax was imposed exclusively on the introduction of the articles and appliances, the use of such equipment not having been taken as a basis for the imposition of excise taxes; (3) the tax laws of Puerto Rico do not apply in the federal area of Ramey Air

The taxpayer went to the Superior Court and after a hearing on the merits, the said Court rendered judgment granting the complaint as to the compressors propelled by diesel oil and as to the house trailers, and dismissing the complaint as to the other items.

The Secretary of the Treasury brought this appeal against that part of the judgment which grants the complaint as to the two points mentioned above.

In the first place he maintains that the Superior Court erred in deciding that the house trailers were not taxable under Section 8(a) of the old Internal Revenue Act (13 LPRA 1040), as amended up to the date of the introduction in Puerto Rico of the house trailers.

Under the original Internal Revenue Act (Act No. 87 approved May 20, 1925, as amended) vehicles which were not self-propelling were not taxable. In spite of the fact that sub-sections 7 and 8 of Section 16 of the said act mentioned "auto bodies without motors" and "tractors without motors" as being taxable, we decided that certain semi-trailers were not taxable. *P. R. Iron Works v. Buscaglia, Treas.*, 62 P.R.R. 839; *Compañía de Ferrocarriles v. Buscaglia, Treas.*, 63 P.R.R. 49.

By Act No. 116 approved May 12, 1943 (Sess. Laws, page 334), a new subsection 8(a) was added to Section 16 which taxed "all vehicles not self-propelling, excepting vehicles expressly manufactured to be drawn by human or animal power, . . ." Subsequently this subsection underwent some amendments, but it was not until the year 1947 that trailers and semi-trailers are expressly mentioned as taxable ve-

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Base, to which Public Law 819 (76th Congress, October 9, 1940, H.R. 6887) does not apply; (4) the machinery and equipment of the caliche (crusted calcium carbonate) industrial plant was exempt from taxes; (5) the compressors propelled by power other than electric power, that is, the compressors propelled by fluid gas, were not taxable; the paving breakers are not taxed by the Excise Tax Act, and (6) neither are the house trailers taxed by the said Excise Tax Act.

hicles.[2] Said subsection, which is the law applicable to this case, provided as follows:

"Sec. 1040.—Vehicles not self-propelling.

"On all vehicles not self-propelling, excepting vehicles expressly manufactured to be drawn by human or animal power and cars or carts expressly designed to be drawn by mosquito tractors, 'jeeps' and other similar vehicles for the hauling of agricultural products within the farm, sold, transferred, or used, or consumed in or introduced into Puerto Rico, a tax of ten (10) per cent on the selling price in Puerto Rico, *Provided*, that trailers and semitrailers sold, transferred, or used, or consumed in or introduced into Puerto Rico, shall be subject to a tax of fifteen (15) per cent on the selling price in Puerto Rico." (13 LPRA, pages 671 and 672.)

In describing the trailers which were the object of the imposition and collection of excises in this case, the trial court stated:

"The small dwellings we are dealing with were taken, already made, on their own wheels attached to and rotating around axles which are fixed to the lower frame of the structures themselves. Such contrivances were in fact dwellings, *basically and principally*, even though they had certain characteristics proper to vehicles—that is, to carriages relatively *easy* to be moved on the surface of the earth which are fit for and are customarily used in the *transportation of persons or things.*

"The devices concerned do not combine the conditions effectively appropriate to do this last thing in an efficient and economical manner: What can be transported in them, *once in a while*, is the few pieces

[2] Act No. 425 of May 14, 1947.

of furniture which, for living purposes are contained in them. The uncomfortable features found in them, such as their sink, stove, cupboard, etc., are permanent parts of the same. More than anything else they are luxurious substitutes for tents. It is as such tents or barracks that they are principally used.

"They do not have the conditions that are suitable for true dwellings, other than the dwellings existing in the slums. They are special types of barracks used in *camps* for employees working on construction jobs, in areas which, ordinarily, are far from urban zones.

"But the special features which characterize them and their discomforts as dwellings for long periods of time, do not turn these contrivances into the *vehicles* which, in our opinion, the *legislator had in mind* in approving Section 16 (8) (a), supra." (Page 19, T. R.)

The determination of whether or not the house trailers were taxable under the Internal Revenue Act, cannot rest on the use to which they were principally put. While the evidence of plaintiff tried to show that the house trailers were set on concrete blocks at Ramey Base and had such facilities as electricity, water and sewage systems, it is no less a fact that they were introduced in Puerto Rico as carriages to be towed and that they were taken from San Juan to Aguadilla and later brought again to San Juan on their wheels, towed by self-propelling vehicles. In this way they could be taken on our roads to any part of the Island, thus giving them the use for which they had been designed, i.e., towed vehicles.

The legislator did not define in the law the terms "trailers" and "semi-trailers". Neither did he use Spanish words to describe them. The word "trailer" has been translated into Spanish, among other ways, as "*carro o coche remolcado*" (hauled car or carriage).[3] In accordance with

[3] Appleton's New English-Spanish and Spanish-English Dictionary.

the definition given by Webster, the term "trailer" includes a vehicle, equipped to be used as a dwelling and towed by a passenger car.[4] There is no controversy as to the fact that these contrivances (house trailers) are constructed so that they can be moved on their own wheels, towed by other self-propelling vehicles. They could hardly be eliminated from the classification as *trailers*. It should be noted that in mentioning trailers and semi-trailers for the first time in the 1947 amendment, they are included under the subsection covering "vehicles not self-propelling." It is explained that they are mentioned in a "Proviso" at the end of subsection 8(a) because the tax on these vehicles was greater than that set for other vehicles not self-propelling.[5]

The court erred in deciding that the house trailers introduced by plaintiff in Puerto Rico were not subject to the payment of the excise taxes stated in the Internal Revenue Act.

However, it did not err in deciding that the compressors propelled by diesel oil were not taxable under the Internal Revenue Act. We decided this same question against the Secretary of the Treasury in the case of *San Miguel & Co., Inc.* v. *Secretary of the Treasury*, 82 P.R.R. —, and again in *Island Properties Co., Ltd.* v. *Secretary of the Treasury*, 82 P.R.R. —, decided on June 8, 1961.

The judgment of the Superior Court shall be reversed

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[4] "Trailer. 1. . . . 2. A highway vehicle designed to be hauled, esp. by an automotive vehicle, as a truck trailer or a semitrailer; especif. one equipped for use as a dwelling, to be drawn by a passenger automobile." Webster's *New Collegiate Dictionary; Moffitt* v. *State Automobile, Inc. Ass'n.*, 300 N.W. 837.

[5] While in the amendment to subsection 8(a) of 1955 these vehicles are called by their name, calling them "house trailers", that is probably due to the fact that they had to be distinguished in some way, from trailers and semi-trailers since the latter were exempt from excises while the houses on wheels were taxable. (See Act No. 59 of June 10, 1955.)

insofar as it grants the complaint for refund of the excises paid by plaintiff on the house trailers introduced by it in Puerto Rico.

(s) PEDRO PEREZ PIMENTEL
Associate Justice

JUDGMENT

San Juan, Puerto Rico, December 27, 1961

For the reasons stated in the preceding opinion, the judgment rendered by the Superior Court, San Juan Part, on February 21, 1957 is hereby reversed inasmuch as it grants the complaint for refund of the excise taxes paid by plaintiff on the house-trailers introduced by it in Puerto Rico, and the case is remanded for further proceedings.

It was so decreed and ordered by the Court as witnesses the signature of the Chief Justice.

LUIS NEGRON FERNANDEZ
Chief Justice

I attest:

IGNACIO RIVERA
Secretary

RESOLETION

San Juan, Puerto Rico, January 19, 1961

The Motion for Reconsideration of plaintiff-appellee-appellant dated January 8, 1962, is denied.

It was so decreed and ordered by the Court as witnesses the signature of the Chief Justice.

LUIS NEGRON FERNANDEZ
Chief Justice

I Certify:

IGNACIO RIVERA
Secretary

[SEAL]